IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2024 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NATIONALINSURANCE CO LTD

Versus

MAKWANA VINUBHAI SAVJIBHAI & ORS

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Appearance :

MR MEHUL SHARAD SHAH for Appellant
MR HARSHIT S TOLIA for Respondent No. 1
RULE SERVED for Respondents No. 2 - 4.

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

Date : 24/10/2005

ORAL JUDGMENT

1 Upon joint request of learned Advocates for the parties, this Appeal was taken up for the final

hearing.

2 Learned Advocate Mr. Mehul Sharad Shah for the appellant and learned Advocate Mr. Tolia for Respondent No.1 original claimant were heard. Respondents No. 2 to 4 are served.

3 This Appeal is preferred against the order passed by the learned Motor Accident Claims Tribunal (Main), Bhavnagar, on 9th of May, 2005, in Motor Accident Claim Petition No.911 of 2002 below Exh. 5 application filed by the original claimant under Section 140 of the Motor Vehicles Act. The learned Tribunal pleased to allow the application filed on behalf of the claimant and awarded Rs. 25,000/- by way of compensation under no fault liability with interest at the rate of 9% per annum from the date of application and hence this Appeal.

4 Learned Advocate for the appellant Mr. Shah raised mainly three contentions that the first information report of the accident came to be filed

after seven months of the incident, no primary injury certificate came to be produced by the appellant and that the driver and owner of the vehicle allegedly involved in the accident filed affidavits that such accident had never occurred. Learned Advocate for the appellant urged that having considered these three aspects, the factum of the accident is in dispute and doubtful and hence the application under Section 140 of the Motor Vehicles Act ought not to have been granted.

5 Having gone through the record and having heard learned counsels at this stage, it is not necessary to embark upon the factual aspect as urged by learned Advocate for the appellant and to come to a decision either way. Learned Tribunal after considering those aspects came to the conclusion that the appellant was entitled to compensation under section 140 of the Motor Vehicles Act. However, those factual aspects can be proved or disproved by the evidence during trial of main Motor Accident Claim Petition No. 911 of 2002, but at this juncture, interference in the

order impugned is not required except the amount to be paid in cash to the appellant is required to be secured.

6 While disposing of this Appeal, it is directed that the original claimant shall furnish surety before the Tribunal at Bhavnagar for the amount of 40% awarded by the Tribunal to be paid in cash to the claimant respondent No.1 herein. Therefore, on furnishing surety to the satisfaction of the Tribunal, the Tribunal shall make payment of 40% of the awarded amount to the claimant – respondent No.1 herein. While as per the award of the Tribunal, remaining 60% of the awarded amount shall be invested as directed by the Tribunal in the award impugned. It is further directed that the claimant shall not withdraw the main Motor Accident Claim Petition No. 991 of 2002 and that he shall see to that and take utmost care that the said Motor Accident Claim Petition does not result in dismiss for default on any grounds. The Appeal stands disposed of according.

8 Civil Application No. 6322 of 2005 also stands disposed of. Rule made absolute as above said.

(J.R.VORA, J.)

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